Supreme Court, U.S.
FILED
05 - 726 OCT 25 2005
OFFICE OF THE CLERK

No. _____

In The Supreme Court of the United States

JASON JAGODKA,
Petitioner,

v.

BLAINE C. LAFLER, WARDEN,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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October, 2005

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QUESTIONS PRESENTED FOR REVIEW

I. DID THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DISMISS PETITIONER JASON JAGODKA'S PETITION FOR WRIT OF HABEAS CORPUS BY HOLDING THAT HE WAS NOT ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS, EVEN THOUGH HE HAS DEMONSTRATED THAT HIS IGNORANCE OF 28 U.S.C. § 2244 BETWEEN 1996 AND 2003 WAS REASONABLE DUE TO HIS YOUNG AGE AT THE TIME, HE SUBSEQUENTLY DILIGENTLY PURSUED HABEAS CORPUS RELIEF, AND THERE WAS A COMPLETE ABSENCE OF PREJUDICE TO THE RESPONDENT?

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OPINIONS BELOW

United States District Court Judge Arthur J. Tarnow denied Petitioner Jagodka's petition for writ of habeas corpus in an unpublished opinion and order on February 26, 2004. The Order is attached as Appendix C. Judge Tarnow went on to grant Petitioner Jagodka's certificate of appealability as to the issue of whether Petitioner Jagodka was entitled to equitable tolling, due to the fact that the petition was filed beyond the 1-year deadline. This Order of April 30, 2004 is attached as Appendix B.

A three judge panel of the Sixth Circuit denied Petitioner Jagodka's appeal in an unpublished opinion dated July 27, 2005. This Order is attached as Appendix A.

Petitioner Jagodka petitions for certiorari to this Court from these opinions and orders denying him entitlement to equitable tolling.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). *Hohn v. United States*, 524 U.S. 236 (1998).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by. . . writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. §1915(a)(1):

Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C. § 2244 (d)(1):

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT OF THE CASE

Petitioner Jason Paul Jagodka was charged with first degree murder (Mich. Comp. Laws 750.316), and felony firearm (Mich. Comp. Laws 769.227b). Petitioner was convicted of second degree murder (Mich. Comp. Laws 750.317), and felony firearm (Mich. Comp. Laws 769.227b), pursuant to a no contest plea before Monroe County Circuit Court, Monroe County, Michigan, Judge William F. LaVoy on August 21, 1996. On that same day, as part of a plea agreement, a sentence recommendation from the prosecutor's office stated that Jagodka would receive a minimum sentence of 25 years, and co-defendant Dennis Pogarch would receive a minimum sentence of 20 years, and the parties also agreed that since the defendants were juveniles, that a juvenile dispositional hearing would be conducted prior to sentencing.

Petitioner Jagodka is currently serving a sentence of 25 to 50 years in the Michigan Corrections System. Following his sentencing, Petitioner Jagodka, a sixteen year-old child, never instituted any post-conviction proceedings at the appellate level. Petitioner then filed a Motion for Relief from Judgment in the trial court on January 12, 2001. On April 23, 2001, Judge LaVoy entered an opinion and order denying the motion.

Petitioner Jagodka filed an Application for Leave to Appeal with the Michigan Court of Appeals, which was denied. *People v. Jagodka*, No. 240512 (Mich. Ct. App., June

25, 2002). Petitioner Jagodka filed an Application for Leave to Appeal with the Michigan Supreme Court, which was denied in a standard order. *People v. Jagodka*, No. 122180 (Mich. Sup. Ct., February 28, 2003). Reconsideration was denied by the Michigan Supreme Court on May 30, 2003. *People v. Jagodka*, No. 122180 (Mich. Sup. Ct., May 30, 2003).

Petitioner Jagodka, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, in the District Court on June 12, 2003. The case was referred to District Judge Arthur J. Tarnow, who, on March 2, 2004, issued an opinion dismissing the petition due to the fact that the petition was filed beyond the 1-year deadline of 28 U.S.C. §§ 2244(d). Judgment in accord was entered on the same day.

Petitioner Jagodka filed a Notice of Appeal on March 5, 2004, and on May 1, 2004, Judge Tarnow granted Petitioner Jagodka a certificate of appealability with respect to the issue of equitable tolling.

A three judge panel of the Sixth Circuit denied Petitioner Jagodka's appeal in an unpublished opinion dated July 27, 2005.

Petitioner Jagodka petitions for certiorari to this Court from these opinions and orders denying him entitlement to equitable tolling.

ARGUMENT

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DISMISSED PETITIONER JASON JAGODKA'S PETITION FOR WRIT OF HABEAS CORPUS BY HOLDING THAT HE WAS NOT ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS, EVEN THOUGH HE HAS DEMONSTRATED THAT HIS IGNORANCE OF 28 U.S.C. §§ 2244 BETWEEN 1996 AND 2003 WAS REASONABLE DUE TO HIS YOUNG AGE AT THE TIME, HE SUBSEQUENTLY DILIGENTLY PURSUED HABEAS CORPUS RELIEF, AND THERE WAS A COMPLETE ABSENCE OF PREJUDICE TO THE RESPONDENT.

Petitioner Jason Paul Jagodka tendered a no contest plea before Monroe County Circuit Court, Monroe County, Michigan, Judge William F. LaVoy on August 21, 1996. On that same day, as part of a plea agreement, a sentence "recommendation" from the prosecutor's office stated that Petitioner Jason Paul Jagodka would receive a minimum sentence of 25 years, and co-defendant Dennis Pogarch would

receive a minimum sentence of 20 years, and the parties also agreed that since the defendants were juveniles, that a juvenile dispositional hearing would be conducted prior to sentencing.

Proceedings in the State Courts

The charges against Petitioner Jason Paul Jagodka arose out of an incident which allegedly occurred during on January 23, 1996. The prosecution's theory of the case was that Petitioner and co-defendant Dennis Pogarch, both of whom were 16-year-old high school youths, shot and killed Petitioner's mother. The defense position was that Petitioner was coerced and/or induced into committing the act by co-defendant Dennis Pogarch.

After entering into the plea, the parties agreed that since the defendants were juveniles, that a dispositional hearing would be conducted prior to sentencing.

On October 25, 1996, Judge LaVoy conducted a sentence dispositional hearing for both of the defendants, and subsequently took the matter under advisement. On October 29, 1996, Judge LaVoy ruled that both defendants would be sentenced as adults rather than juveniles.

As stated above, Petitioner Jagodka did not claim an appeal of right in the Michigan Court of Appeals. However, he subsequently file a Motion for Relief from Judgment in the trial court, which was denied on April 23, 2001 by Judge LaVoy.

Petitioner Jagodka filed an Application for Leave to Appeal with the Michigan Court of Appeals, which was denied on June 25, 2002. The Michigan Supreme Court denied Leave to Appeal on February 28, 2003, and Reconsideration was denied on May 30, 2003.

Proceedings in the Federal Courts

Petitioner Jagodka filed a Petition for Writ of Habeas Corpus on June 12, 2003, arguing that he was denied his constitutional right to effective assistance of counsel. He also argued that the Judge misconstrued the law when he made certain rulings, and that his sentence amounted to a disproportionate sentence, which violated the Eighth Amendment's ban on cruel and unusual punishment. U.S. Const. Amend. VIII.

On March 2, 2004, District Judge Arthur J. Tarnow issued a Judgment and Opinion and Order dismissing the Petition for Writ of Habeas Corpus. Judge Tarnow found that Petitioner did not timely pursue his habeas corpus relief, and that he is not entitled to equitable tolling.

Petitioner was granted a certificate of appealability on the sole issue of whether his petition was time-barred. Although Petitioner recognizes that his petition was filed outside the applicable statute of limitations, he nevertheless asserted that he is entitled to equitable tolling due to the petitioner's lack of constructive knowledge of the filing requirement, and given the fact that he was only 16 years old

at the time of the crime, he has demonstrated that his ignorance of §§ 2244 between 1996 and 2003 was reasonable. Once his grandparents obtained appellate counsel on his behalf in 2001, he was diligent in pursuing his rights by exhausting his state court remedies and filing the Writ in less than one month after the Michigan Supreme Court denied reconsideration of his application for leave to appeal. In addition, there was a complete absence of prejudice to the Respondent by the late filing of the Writ.

The one-year statute of limitations, 28 U.S.C. §§ 2244(d), became effective on April 24, 1996. His petition was filed outside the applicable statute of limitations.

However, the one-year limitation period prescribed by AEDPA for habeas actions is not a jurisdictional limitation, and is subject to equitable tolling. *Dunlap v. United States*, 250 F.3d 1001, 1007 (6th Cir. 2001). In this regard, Petitioner contends that he is entitled to equitable tolling.

The following five factors are to be considered in determining the appropriateness in tolling a statute of limitations: "(1) the petitioner's lack of notice of the filing requirement; (2) the petitioner's lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the respondent; and (5) the petitioner's reasonableness in remaining ignorant of the legal requirement for filing his claim." *Dunlap v. United States, supra* at 1008; *Andrews v. Orr,* 851 F.2d 146, 151 (6th Cir.1988).

Equitable tolling is only warranted in "rare and exceptional circumstances." *York v. Galetka,* 314 F.3d 522, 527 (10th Cir.2003). However, courts have noted that "[e]quitable tolling would be appropriate ... when a prisoner is actually innocent" or "when an adversary's conduct--or other uncontrollable circumstances--prevents a prisoner from timely filing." *Gibson v. Klinger,* 232 F.3d 799, 808 (10th Cir.2000). The Fifth Circuit concluded that "[t]he State's failure to make available to a prisoner the AEDPA, which sets forth the basic procedural rules the prisoner must follow in order to avoid having his habeas petition summarily thrown out of court [constituted] an impediment" under §§ 2244(d)(1)(B). *Egerton v. Cockrell,* 334 F.3d 433, 438 (5th Cir.2003) Accordingly, the court held that the one-year limitations period did not begin to run until the petitioner in that case was transferred to a facility where a copy of AEDPA was available. *Egerton v. Cockrell, supra* at 438.

Petitioner Jagodka maintains that his ignorance of §§ 2244 between 1996 and 2001 was reasonable. He was only 16 years old at the time of the state court proceedings. Given his age and lack of maturity at the time, he could not be expected to have even reasonable constructive knowledge of the one-year statute of limitations, particularly since it was only enacted into law less than 6 months prior to his plea and sentence.

Furthermore, once his grandparents obtained counsel for him to pursue appellate remedies, his lack of appeals to

the Court of Appeals and the Michigan Supreme Court prevented him from filing his habeas corpus petition within the applicable statute of limitations. Nevertheless, he was diligent in pursuing his rights by exhausting his state court remedies with counsel and filing the Federal Writ less than one month after the Michigan Supreme Court denied reconsideration of his application for leave to appeal. These actions clearly demonstrate that Petitioner Jagodka timely pursued his request for habeas relief. As Petitioner Jagodka timely pursued his habeas corpus relief once he exhausted his state court remedies, he is entitled to equitable tolling.

The Sixth Circuit incorrectly determined that Petitioner Jagodka was not entitled to equitable tolling of the statute of limitations. The Court took note of the unusual procedural history of Petitioner Jagodka's state court litigation but concluded that Petitioner Jagodka did not pursue his rights diligently. The Court focused primarily on the fact that courts are reluctant to find that a lack of notice of the AEDPA, or ignorance of the law in general, excuses a late filing.

However, the record does not support the Court's conclusion that Petitioner Jagodka was not diligent in pursuing his rights. See, *Dunlap*, 250 F.3d at 1008. While it is true that more than five years elapsed between the imposition of Petitioner Jagodka's sentence in November 1996 and the filing of his state post-conviction action in 2001, he clearly offered a reasonable explanation of this long delay.

Moreover, when he filed his state post-conviction action, he was still unaware of AEDPA, and the fact that he was only able to file any appellate pleadings after his grandparents obtained legal counsel for him supports the proposition that his lack of access to AEDPA contributed to the delay in filing his §§ 2254 petition. See, *Egerton v. Cockrell, supra.*

Finally, it is worth noting that there was a complete absence of prejudice to the Respondent by the late filing of the writ in this case. Any consideration of Petitioner's claims raised in his previously filed writ of habeas corpus would have merely amounted to more work for the Respondent.

The denial of equitable tolling would effectively preclude appellate review in this case. The one-year statute of limitations is designed to bar frivolous appeals, not to preclude appellate review of cases involving substantial issues. Since the federal district court has not indicated that the issues involved in Petitioner Jagodka's petition are frivolous, it is clear that the matters raised in the previously filed writ of habeas corpus should be considered on their merits.

SUMMARY AND RELIEF REQUESTED

For these reasons Petitioner Jagodka ask this Honorable Court to grant certiorari in this case and remand this matter to the United States Court of Appeals for the Sixth Circuit for review of the issues raised in his petition for writ of habeas corpus.

Respectfully submitted,

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APPENDIX

6TH CIRCUIT COURT OF APPEALS FILINGS:

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EASTERN DISTRICT OF MICHIGAN FILINGS:

Opinion and Order Granting
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Opinion and Order Granting
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Summary Judgment and
Dismissing Petition for
Writ of Habeas Corpus,
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Judgment,
filed 02/26/04 ..... D1-D2

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OPINION,
FILED JULY 27, 2005

A-1 through A-6

NOT RECOMMENDED FOR PUBLICATION

No. 04-1345

FILED
July 27, 2005
Leonard Green,
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JASON JAGODKA,	)	
Petitioner-Appellant,	)	ON APPEAL FROM
v.	)	THE UNITED STATES
BLAINE LAFLER,	)	DISTRICT COURT FOR
Respondent-Appellee.	)	THE EASTERN DISTRICT
		OF MICHIGAN

Before: **SILER** and **DAUGHTREY**, Circuit Judges; and **MARBLEY**, District Judge.*

PER CURIAM. Petitioner Jason Jagodka appeals the district court's denial of his petition for a writ of habeas corpus. The issue certified for appeal by the district court is whether Jagodka's petition was timely in light of the one-year statute of limitations in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). 28 U.S.C. § 2244(d)(1). We affirm.

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* The Honorable Algenon L. Marbley, United States District Judge for the Southern District of Ohio, sitting by designation.

BACKGROUND

Jagodka is a Michigan prisoner serving sentences of 25 to 50 years for second degree murder, and two years for possession of a firearm while in the commission of a felony. He pleaded no contest to the charges in 1996 and, although he was 16, was sentenced as an adult. The convictions were finalized on November 14, 1997, one year after sentencing, when the time limit for filing a direct appeal in state court expired. *See* 28 U.S.C. § 2244(d)(1)(A); M.C.R. 7.205(F)(3). Jagodka did not seek either direct review of his conviction or collateral attack at the state level before his conviction was finalized.

In 2001, Jagodka filed a motion for relief from judgment in Monroe County Circuit Court. In denying this motion, the court found that Jagodka had not met his burden of establishing entitlement to the relief requested, as set forth in M.C.R 6.508(D)(3), which precludes the court from granting relief to the defendant if "the motion . . . alleges grounds for relief . . . which could have been raised on appeal from the conviction and sentence." *Id.* An exception exists if the defendant can demonstrate "good cause for failure to raise

such grounds on appeal," but the court concluded that Jagodka had not met this burden. Jagodka then filed a motion for leave to appeal in the Michigan Court of Appeals, which was denied in 2002. Similarly, the Michigan Supreme Court denied Jagodka's delayed application for leave to appeal in February 2003, stating only that he had "failed to meet the burden of establishing entitlement to relief under MCR 6.508(D)." His motion for reconsideration was denied in May 2003.

Jagodka filed this petition for a writ of habeas corpus on June 12, 2003, alleging that he was denied effective assistance of counsel at trial and that his sentence was disproportionately harsh. He concedes that his petition was untimely; however, he maintains that he did not file the necessary state appeals because he lacked appellate counsel until 2001, when his grandparents obtained legal representation for him. The district court granted the respondent Lafler's motion for summary judgment, dismissing the petition with prejudice as untimely. The district court then granted Jagodka a Certificate of Appealability only on the issue of whether his habeas petition was timely filed.

DISCUSSION

Federal courts grant equitable tolling sparingly, and the burden is on the petitioner to show that it is warranted. *Griffin v. Rogers*, 399 F.3d 626, 635 (6th Cir. 2002) (citing *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)). We review a district court's decision to refuse equitable tolling *de novo*. *Dunlap v. United States*, 250 F.3d 1001, 1008 (6th Cir. 2001).

The one-year limitation period prescribed by AEDPA for habeas actions is a statute of limitation, not a jurisdictional limitation, and therefore is subject to equitable tolling. *Id.* at 1007. To decide whether equitable tolling applies, this court weighs the following five factors: "(1) the petitioner's lack of notice of the filing requirement; (2) the petitioner's lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the respondent; and (5) the petitioner's reasonableness in remaining ignorant of the legal requirement for filing his claim." *Id.* at1008 (citing *Andrews v. Orr*, 851 F.2d 146, 151 (6th Cir.1988)). These factors are not necessarily comprehensive and are not relevant in all cases. *Cook v. Stegall*, 295 F.3d 517, 521 (6th Cir. 2002).

For brevity, the *Andrews* factors are combined for analysis. Merging the first, second and fifth factors, Jagodka argues that he lacked actual and constructive knowledge of the § 2244(d) filing requirement because he was only 16 years old at the time he pleaded no contest, a probation officer found him to be relatively immature for his age, and he was sentenced only six months after AEDPA became effective. However, Jagodka failed to allege any material impediment to his filing a timely application.

Jagodka argues that he was too young and immature to understand his rights, disregarding the findings of fact made at sentencing regarding his maturity and age. We have, in an unpublished opinion, implicitly rejected this argument. *See Starnes v. United States*, No. 99-5144, 18 Fed. Appx. 288, 293 (6th Cir. Aug. 22, 2001) (noting that "courts are reluctant to find that a lack of actual notice of the AEDPA, or ignorance of the law in general, may excuse a late filing."). Additionally, although Jagodka asserts that his untimeliness should be excused because only six months passed between his sentencing and AEDPA's effective date, this argument is misleading. He had *two years* from his sentencing–not six months–to file a timely habeas petition. He was sentenced on

November 14, 1996, and the habeas statute of limitations expired on November 14, 1998. AEDPA had long been in effect by the time his habeas petition was due.

The third factor to consider is the degree of diligence exhibited by the petitioner in pursuing his rights. Jagodka delayed from 1996 until 2001 to begin the necessary state appeals. He attempts to excuse this inactivity by arguing that his grandparents could not afford legal counsel for him during that time. However unfortunate, this is no excuse, as no constitutional right to an attorney in state post-conviction proceedings exists. *Coleman v. Thompson*, 501 U.S. 722, 757 (1991). Additionally, Jagodka has offered no evidence that he pursued his rights *in any way* between sentencing and the filing of this petition – even using appellate counsel the state court offered to appoint for the purposes of direct review. Because Jagodka was not wrongfully deprived of appellate counsel, no adequate justification exists for his delay.

The fourth and final prong, prejudice to respondent, need not be reached "unless the other factors of the test are met." *See Dunlap*, 250 F.3d at 1009. In light of the *Andrews* factors, Jagodka has not met his burden to demonstrate entitlement to equitable tolling of the statute of limitations.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

OPINION AND ORDER GRANTING
REQUEST FOR CERTIFICATE OF APPEALABILITY,
FILED APRIL 30, 2004

B-1 through B-4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON JAGODKA,
Petitioner,

Case Number: 03-72267

v.

HONORABLE ARTHUR J. TARNOW

BLAINE C. LAFLER,
Respondent.

_____/

FILED
April 30, 2004
Eastern District
of Michigan,
Clerk

OPINION AND ORDER GRANTING REQUEST FOR CERTIFICATE OF APPEALABILITY

Petitioner Jason Jagodka, through his attorney, filed a petition for a writ of habeas corpus pursuant to 28 D.S.C. § 2254. On February 26, 2004, the Court issued an Opinion and Order Granting Respondent's Motion for Summary Judgment and Dismissing Petition for Writ of Habeas Corpus. Petitioner has filed a Notice of Appeal. Thus, the Court must determine whether Petitioner is entitled to a certificate of appealability (COA). See Castro v. United States, 310 F.3d 900,901-02 (6th Cir. 2002) (holding that "a district judge must issue or deny a COA if an applicant files a notice of appeal" without awaiting the filing of an application for a COA).

"When a habeas applicant seeks permission to initiate appellate review of the dismissal of his petition," a federal court should "limit its examination to a threshold inquiry into the underlying merit of his claims." Miler-El v. Cockrell, 123 S. Ct. 1029, 1039 (2003). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates "'that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880 at 893, n.4 (1983)). When a prisoner's habeas corpus petition was denied on procedural grounds, a certificate of appealability "should issue. . .if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Id.

The Court denied Petitioner's habeas corpus petition because it was not timely filed. Petitioner's conviction became final on November 19, 1997, when the time for filing a direct appeal in state court expired. See M.C.R. 7.204(A)(2) & 7.205(F). Therefore, absent state collateral review, Petitioner was required to file his petition for a writ of habeas corpus by November 19, 1998, to comply with the one-year limitations period. Petitioner sought state collateral review of his conviction. However, on November 19, 1997, the date the limitations period commenced, Petitioner had no application for collateral review pending. He did not file his motion for relief from judgment until January 12, 2001. Thus, the limitations period commenced on November 19, 1997, and continued to run, uninterrupted, until it expired on November 19, 1998. Petitioner's motion for relief from judgment was not filed until over two years after the limitations period expired and, consequently, this Court held it did not serve to toll the limitations period.

Petitioner also failed to allege that there existed any impediment to his filing a timely application, that his claim involves a newly-recognized constitutional right or newly-

discovered facts, or that he is actually innocent. The Court, therefore, held that the petition was untimely.

My ego tells me that all reasonable jurists would agree with my decision that the petition was not timely filed. My experience is opposite. Thus, my belief that this was the correct decision should not insulate that decision from further review. See Taylor v. Howes, 26 Fed. Appx. 397, 399 (6th Cir. 2001). Because the Court is not infallible and does not believe that its decision should be insulated from further review, the Court finds that reasonable jurists could find it debatable whether this Court was correct in its procedural ruling and whether the petition states a valid claim of the denial of a constitutional right. See Slack, 529 U.S. at 484. Therefore, the Court shall grant a certificate of appealability for consideration of the timeliness of the petition.

Accordingly, for the foregoing reasons, **IT IS ORDERED** that Petitioner's Request for Certificate of Appealability is **GRANTED**.

/s/ Arthur J. Tarnow
ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

DATE: April 30, 2004

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

OPINION AND ORDER GRANTING
RESPONDENT'S MOTION FOR SUMMARY
JUDGMENT AND DISMISSING
PETITION FOR WRIT OF HABEAS CORPUS,
FILED FEBRUARY 26, 2004

C-1 through C-6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON JAGODKA,
Petitioner,

Case Number: 03-72267

v.

HONORABLE ARTHUR J. TARNOW

BLAINE C. LAFLER,
Respondent.
_____/

FILED
February 26, 2004
Eastern District
of Michigan,
Clerk

OPINION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

Petitioner Jason Paul Jagodka, through his attorney, has filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. Petitioner is currently incarcerated at the Saginaw Correctional Facility in Freeland, Michigan. Before the Court is Respondent's Motion for Summary Judgment and Dismissal of Petition for Writ of Habeas Corpus.

II. Procedural History

On August 21, 1996, Petitioner pleaded no contest in Monroe County Circuit Court to second-degree murder and possession of a firearm during the commission of a felony. On November 14, 1996, he was sentenced to twenty-five to fifty years imprisonment for the second-degree murder conviction, to be served consecutively to two years imprisonment for the felony-firearm conviction. Petitioner did not file a direct appeal of his conviction or sentence.

On January 12,2001, Petitioner filed a motion for relief from judgment in the trial court. The trial court denied the motion on April 23, 2001. People v. Jagodka, No. 96-27613 (Monroe County Circuit Court Apr. 23, 2001). Petitioner filed a delayed application for leave to appeal the trial court's decision in the Michigan Court of Appeals. The Michigan Court of Appeals denied leave to appeal. People v. Jagodka, No. 240512 (Mich. Ct. App. June 25, 2002). Petitioner then filed a delayed application for leave to appeal in the Michigan Supreme Court. The Michigan Supreme Court denied leave to appeal. People v. Jagodka, 468 Mich. 853 (Mich. Feb. 28, 2003). Petitioner filed a motion for

reconsideration, which was denied. People v. Jagodka, No. 122180 (Mich. May 30, 2003).

On June 12, 2003, Petitioner, through his attorney, filed the pending petition for a writ of habeas corpus.

III. Analysis

Respondent has filed a Motion for Summary Judgment on the ground that the petition for habeas corpus relief was not timely filed. The Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214 ("AEDPA" or "the Act") applies to all habeas petitions filed after the effective date of the Act, April 24, 1996. Petitioner's application for habeas corpus relief was filed after April 24, 1996. Therefore, the provisions of the AEDPA, including the limitations period for filing an application for habeas corpus relief, apply to Petitioner's application. Lindh v. Murphy, 521 U.S. 320, 337 (1997).

The AEDPA amended 28 U.S.C. § 2244 to include a one-year limitations period within which habeas petitions challenging state court judgments must be filed. A prisoner is required to file a federal habeas corpus petition within one year of:

> the date on which the judgment of conviction became final by the conclusion of direct review or the expiration of the time for seeking such review.

28 U.S.C. § 2244 (d)(1)(A).

However, the time during which a prisoner seeks collateral review of a conviction does not count toward the limitations period. Section 2244(d)(2) provides:

> The time during which a properly filed application for post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(2).

In the pending case, Petitioner's conviction became final on November 19, 1997, when the time for filing a direct appeal in state court expired. See M.C.R. 7.204(A)(2) & 7.205(F). Therefore, absent state collateral review, Petitioner was required to file his petition for a writ of habeas corpus by November 19, 1998, to comply with the one-year limitations period. Petitioner sought state collateral review of his conviction. However, on November 19, 1997, the date the limitations period commenced, Petitioner had no application for collateral review pending. He did not file his motion for

relief from judgment until January 12,2001. Thus, the limitations period commenced on November 19, 1997, and continued to run, uninterrupted, until it expired on November 19, 1998.

Petitioner's motion for relief from judgment was not filed until over two years after the limitations period expired and, consequently, did not serve to toll the limitations period. Petitioner fails to allege that there existed any impediment to his filing a timely application, that his claim involves a newly-recognized constitutional right or newly-discovered facts, or that he is actually innocent. Therefore, Petitioner has failed to present any circumstances which would warrant equitable tolling of the limitations period.

Accordingly, Petitioner's application for a writ of habeas corpus is barred by the one-year statute of limitations.

IV. Conclusion

For the foregoing reasons, the Court concludes that the habeas corpus petition was filed outside the one-year limitations period prescribed in 28 U.S.C. § 2244 (d)(1)(A). Further, the Court concludes that Petitioner has failed to establish that he is entitled to equitable tolling of the limitations period.

Accordingly, **IT IS ORDERED** that the Respondent's Motion for Summary Disposition and Dismissal of Petition for Writ of Habeas Corpus is **GRANTED.**

IT IS FURTHER ORDERED that the petition for a writ of habeas corpus is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 2244(d)(1)(A).

/s/ Arthur J. Tarnow
ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE

DATE: February 26, 2004

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

JUDGMENT,
FILED FEBRUARY 26, 2004

D-1 through D-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

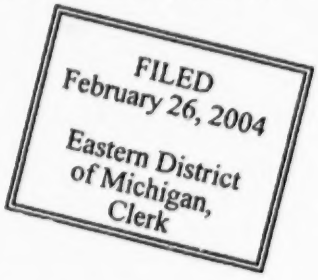
JASON JAGODKA,
Petitioner,

Case Number: 03-72267

v.

HONORABLE ARTHUR J. TARNOW

BLAINE C. LAFLER,
Respondent.
_____/



JUDGMENT

The above entitled matter having come before the Court on a Petition for Writ of Habeas Corpus, Honorable Arthur J. Tarnow, a United States District Judge, presiding, and in accordance with the Memorandum Opinion and Order entered on February 26, 2004.

IT IS ORDERED AND ADJUDGED that the Petition for Habeas Corpus is **DISMISSED WITH PREJUDICE.**

Dated at Detroit, Michigan, this 26th Day of February, 2004.

DAVID J. WEAVER
CLERK OF THE COURT

BY: /s/ Cathe A. Pickles
Deputy Clerk

Approved:

ARTHUR J. TARNOW
ARTHUR J. TARNOW
UNITED STATES DISTRICT JUDGE